



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,020	06/26/2000	Kevin D. Howard	387785	2865

7590 11/28/2003

CURTIS A. VOCK, ESQ
LATHROP & GAGE, L.C.
4845 PEARL EAST CIRCLE, SUITE 302
BOULDER, CO 80301

EXAMINER

JAROENCHONWANIT, BUNJOB

ART UNIT PAPER NUMBER

2143

DATE MAILED: 11/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

09/603,020

Applicant(s)

HOWARD ET AL.

Examin r

Bunjoo Jaroenchonwanit

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 28-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: _____

DETAILED ACTION

1. This application has been reviewed, the objections and rejections cited are as stated below.

2. Claims 28-32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7. Cancellation of nonelected claims is required in response to this Office Action.

Information Disclosure Statement

3. The listing of references in pages 2-3 of the specification is improper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the features of claims 1 and 21; the cluster of users processing distribute functions among cluster; the software facilitation payment, in claims 27, 3, 13-17 must be shown in the drawings or the feature(s) canceled from the claim(s). No new matter should be entered.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. § 112:

Art Unit: 2143

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to adequately teach how to make and/or use the invention, i.e. cluster of user, user-performing function. Applicant's disclosure is insufficient to allow one of ordinary skill in the art to make or use the invention without undue experimentation because applicant did not adequately disclose the necessary apparatus to perform the claimed method. See *In re Gunn*, 190 USPQ 402,406 (CCPA 1976.) In fact, applicant's disclosure did not even mention how a plurality of users are formed a plurality of clusters and how the data processing is distributed among the users cluster.

Claim 26 is rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

It is suggested that applicant could overcome 112/first paragraph rejection by providing a suitably detailed system diagram (with appropriate cross-indexing in the detailed description to reference numerals on said system diagram.) No new matter should be added.

The disclosure is objected to because of the following informalities: all means language from all parts of the application except the claims portion should be removed. Means language tends to impede understanding of the described structure. Appropriate correction is required.

During the course of this prosecution, examiner will interpret the word user as a user's computer, PC or workstation.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 2143

8. Claims 1, 5, 6, 9, 18, 21, 23, 25 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Claims 1, 5, 6, 9 and 18 recite the limitations “the steps”, “the step of accessing”, “the step of calculating”, “the step of estimating”, respectively. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential step, structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the element of the claim communicating a program function to library; transmitting elements and translation elements.

11. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential functions, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: the functionality of the cluster, hence, the claim render indefinite because it is not clear why it is so significant to have the cluster connecting to the computer and provide no functionality that could further limit the claim.

12. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential step, structural cooperative relationships of elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: step describes how a plurality of users, i.e., human are form a cluster to distribute processing functions and the location of software facilitate distributed processing functions.

Art Unit: 2143

Applicant is reminded that the claims' language must be presented in such a clear and concise manner to allow a skilled in the art to make and use without undue experimentation.

Appropriate action is required in response to this office action.

Claim Rejections - 35 USC § 102

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

14. ²⁶ Claims 21, 25 and 26 are rejected under 35 U.S.C. 102(e) as being unpatentable over Ellis (US. 6,167,428).

15. Claims 21 and 25, Ellis discloses the invention substantially, including a network accelerating executing of a program used by an entity, comprising:

a computer connected and a distributed cluster connected the computer through the Internet; an ISP having protocol software to engage nodes connected to the ISP to process the function and return result the function (Col. 4, lines 33-64; Col. 5, lines 1-51; Col. 6, lines 5-38); furthermore, computers sharing resources required function call, thus, transfer function or data to library is required thereby inherent.

16. Claims 22-23, Ellis discloses processing function, using cluster of heterogeneous computer (Col.8, lines 1-28).

17. Claim 24, Ellis cluster comprise at least six computers (Col. 8, lines 33-54).

Art Unit: 2143

18. Claim 26, Ellis discloses an ISP comprising: plurality of users connected in cluster to distribute processing functions among the cluster; and software to facilitate distributed processing of a function among the cluster (Col. 7, line 30-Col.8, line 28).

19. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

20. Claims 1, 2, 4, 10 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Attal (US. 5,860,010).

21. Claims 1, 2, 4 and 10, Ellis discloses a method for accelerating execution of a program, comprising the step of:

communicating a program function, data to a library in data communication with the program (fig. 1; Col. 3, lines 1-24);

transmitting the function to a computer facility (INT transmit function RPC to LIB, Fig. 1);

processing the function at the computing facility (LIB processing function);

transmitting results associated with processing the function from the computing facility to the entity (LIB transmit result to INT); and

translating the results to a language compatible with the program (the result is understood by INT).

22. Claim 18, Attal discloses parallel data rate to home node (INT node).

Claim Rejections - 35 USC § 103

23. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

24. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Attal as applied to claim 1, in view Ronen et al (US. 5,905,736).

25. Claim 5, Attal discloses the invention substantially, as claimed, but fails to teach the step of accessing 900 number for making payment. However, such software was notorious in online billing transaction, in an analogous art, Ronen, which teaches a method and system for billing transaction over the Internet system. The system comprises various transactions and payment methods, e.g., prepaid account, credit card payment or pay to vie telephone account such as 900 number account (Col. 2, lines 31-41; Col.4, lines 20-39; Col. 6, lines 11-51). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made that, to expand Attal's system with Ronen's teaching, with regards to these limitation, with the motivation of enhancing user convenient and ability to collect payment, expeditiously.

26. Claims 6-9, 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Attal as applied to claim 1, in view of Ellis (US. 6,617,428).

27. Claims 6-9, Attal discloses the invention substantially, as claimed, but fails disclose cost calculation and estimating MIP. However, in an analogous art, Ellis teaches cost calculation base on MIP (Col.10, lines 1-35). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to expand Attal's system with Ellis's teaching, with

Art Unit: 2143

regard to these limitations, with the motivation of adding a capability of accurately claiming processing compensations.

28. Claim 11, Attal discloses the invention substantially, as claimed, as described claim 1, but fails to express the function is transmitted over the Internet. However, in an analogous art, Ellis a method and system of utilizing idle times or Internet PC through their ISP (Col. 4, lines 33-64; Col. 5, lines 1-51; Col. 6, lines 5-38). Thus, expanding the teaching of Attal with the teaching taught by Ellis, with regards to this limitation, would have been obvious to one of ordinary skill in the art at the time of the invention was made.

29. Claim 12, Attal discloses the invention substantially as discussed in claim 1, but fails to includes a step of calculating processing cost, informing authority of the cost; and receiving permission from the authority to processing function. However, in an analogous art, Ellis teaches costing, buying, selling processing time, which inherently a prior authorization (Col. 10, lines 1-35; Col. 13, line 57-Col. 14, line 8). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made that to include Ellis's concept with Attal's system in order to ensure payment by avoiding payments disputation.

30. Claims 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Attal-Ellis as applied to claim 12, further in view of Ronen et al (US. 5,905,736).

31. Claims 13-17, Attal discloses the invention substantially, as claimed, including transaction-cost calculation (Ellis, Col. 10, lines 1-35), but fails to teach concepts of making payment through electronic transaction, such as e-commerce, prepaid account electronic fund transfer, and billing interval. However, such concepts were notorious in online billing transactions, in an analogous art, Ronen, which teaches a billing transaction over the Internet

Art Unit: 2143

system. The system comprised a various transaction and payment method, which include making monthly payment, prepaid account, credit card payment or pay to via telephone account such as 900 number account (Col. 2, lines 31-41; Col.4, lines 20-39; Col. 6, lines 11-51). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to expand Attal-Ellis collective system with Ronen's teaching with regards to these limitations, with the motivation of enhancing user convenient and ability to collect payments, expeditiously.

32. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Attal as applied to claim 1 and what and applicant admitted prior art.

33. Claim 19, Attal discloses the invention substantially, but using icon to initiating accelerated execution. However, AAPA teaches an icon at entity is known in the art (pg. 12, lines 11-13), Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate typical icons for initiating any programs, functions, because using icons would simplify user interaction with the system.

34. Claim 20, Attal discloses the invention substantially, as claimed, but using DLL. However, AAPA teaches an using DLL in facilitating software is known in the art (page 6, lines 12-13). Thus, it would have been obvious to one of ordinary skill improve applications by using DLL to facilitate acceleration execution. The motivation would be to eliminate compatibility problem, while simplifying system design and reducing design cost, since majority of the computers in the Internet are using Microsoft software, which included DLL.

35. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis as applied to claim 26, in view Ronen et al (US. 5,905,736).

Art Unit: 2143


36. Claim 27, Ellis discloses the invention substantially, as claimed, but fails to teach, software for facilitating external payment. However, such software was notorious in online billing transactions, in an analogous art, Ronen, which teaches a billing transaction over the Internet system. The system comprised a various transaction and payment method, which include prepaid account, credit card payment or pay to vie telephone account such as 900 number account (Col. 2, lines 31-41; Col.4, lines 20-39; Col. 6, lines 11-51). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to expand Ellis's' system with Ronen's teaching, with regards to this limitation, with the motivation of enhancing user convenient and ability to collect payments, expeditiously.

37. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bunjob Jaroenchonwanit whose telephone number is (703) 305-9673. The examiner can normally be reached on 8:00-17:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on (703) 308-5221. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3800.

/bj
11/21/03



BUNJOB JAROENCHONWANIT
PRIMARY EXAMINER